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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/716,474	11/20/2003	Takahiro Kikuchi	KAS-195	6873

7590 12/17/2007  
MATTINGLY, STANGER & MALUR, P.C.  
Suite 370  
1800 Diagonal Road  
Alexandria, VA 22314

EXAMINER
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MEYERS, MATTHEW S

ART UNIT	PAPER NUMBER
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3629

MAIL DATE	DELIVERY MODE
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12/17/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/716,474

**Applicant(s)**

KIKUCHI ET AL.

**Examiner**

Matthew S. Meyers

**Art Unit**

3629

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This action is in response to applicant's communication on 11/19/2007, wherein claims 1-9 are currently pending and claims 10-13 have been cancelled.

### ***Priority***

2. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged.
3. Should applicant desire to obtain the benefit of foreign priority under 35 U.S.C. 119(a)-(d) prior to declaration of an interference, a certified English translation of the foreign application must be submitted in reply to this action. 37 CFR 41.154(b) and 41.202(e).

Failure to provide a certified translation may result in no benefit being accorded for the non-English application.

### ***Information Disclosure Statement***

4. The information disclosure statement (IDS) submitted is being considered by the examiner.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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6. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. As claimed, applicant's claim language is too broad as to completely construe claim scope at this time. However, in accordance with MPEP §2173.06 and the USPTO's policy of providing art rejections even though the claim(s) contain 35 U.S.C. 112 2nd paragraph rejections, the claims are construed and the art is applied as much as practically possible. For example, newly amended claim language, "first examination centers" and "second examination centers" are unclear as to what they encompass and there is no reference to them in the specification. Additionally, applicant's amendments have not cleared up any of the original indefiniteness issues originally presented.

***Claim Rejections - 35 USC § 101***

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-9 are rejected under 35 U.S.C. 101 because under the broadest reasonable interpretation of the claimed invention as a whole encompasses a human being, then a rejection under 35 U.S.C. 101 must be made indicating that the claimed invention is directed to nonstatutory subject matter. Furthermore, the claimed invention must be examined with regard to all issues pertinent to patentability, and any applicable rejections under 35 U.S.C. 102, 103, or 112 must also be made. MPEP 2105.

Presently, Claims 1-9 depend on a human being to collect, record and manage information regarding cross-contamination. Additionally, applicant relies upon a human being again, to offer this information to another human being. After a careful examination of applicant specification, Examiner has determined, using applicant's definitions of "maintenance center", "first examination center", and the "second information center" that these claims are directed towards non-statutory subject matter.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-9 rejected under 35 U.S.C. 102(e) as being anticipated by Mault (Pub. No.: US 2003/0129578).

10. With respect to **Claim 1**:

Mault discloses a system comprising:

a maintenance center collecting, recording and managing information  
(Mault [0006], "...the central computer, upon communication therewith being  
established by any of the individuals, directs a series of inquiries to the

respective individuals requesting responses to be transmitted to the central computer.”);

a plurality of first examination centers offering the information to said maintenance center (Mault [0007], “Various local input devices may be used to transmit this information to the central computer, including mobile telephones, personal digital assistants (PDAs), personal computers, desktop appliances, interactive TVs, and health condition monitors, such as temperature measuring devices, blood pressure measuring devices, respiratory analyzers, etc.”);

a plurality of second examination centers receiving the information from said maintenance center (Mault [0006], “...the central computer, upon communication therewith being established by any of the individuals, directs a series of inquiries to the respective individuals requesting responses to be transmitted to the central computer.”);

a communication system for dispensing the information among said maintenance center, said plurality of first examination centers, and said plurality of second examination centers via communication lines (Mault [0008], “...the information is transmitted from the individuals to the central computer via the Internet communication system.”); and

a processing system for periodically sending the information under management of said maintenance center to said plurality of second examination centers (Mault [0007], “Various local input devices may be used to transmit this information to the central computer, including mobile telephones, personal digital

assistants (PDAs), personal computers, desktop appliances, interactive TVs, and health condition monitors, such as temperature measuring devices, blood pressure measuring devices, respiratory analyzers, etc.”).

11. With respect to **Claim 2**:

Mault discloses a system according to claim 1, wherein said maintenance center carries out a validation test based on the collected information to validate whether the information is true or false(Mault Fig. 4, item 43, “Server software analyzes data”)

12. With respect to **Claim 3**:

Mault discloses a system according to claim 2, wherein said maintenance center is made up of an information collecting organization for collecting the information (Mault Fig. 4, item 44, “Server software generates feedback, alerts”).

13. With respect to **Claim 4**:

Mault discloses a system according to claim 2, wherein said maintenance center is made up of an information collecting and managing organization for collecting the information (Mault [0006], “...the central computer, upon communication therewith being established by any of the individuals, directs a series of inquiries to the respective individuals requesting responses to be transmitted to the central computer.”).

14. With respect to **Claim 5**:

Mault discloses a system according to claim 1, wherein the information regarding cross-contamination contains at least one of information for identifying an offensive reagent, information for identifying a defensive reagent, information regarding a level of influence of the cross-contamination, information regarding a contamination place,

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information regarding a detergent type, and information regarding a detergent volume (Mault [0028], "Each local input device, or some of them, includes a memory for storing data, a display for displaying such data, and an interface for interfacing the local input device with the communication network for transmission to the central computer." and [0028] "By integrating the instantaneous flow volume with the instantaneous oxygen partial pressure, the oxygen uptake of the user can be calculated. Inclusion of additional gas sensors for carbon dioxide, nitric oxide, ketones, and other gases can be included to provide quantification of additional physiological parameters.").

15. With respect to **Claim 6**:

Mault discloses a system according to claim 1, wherein each of said plurality of second examination centers manages an analyzer utilizing the information (Mault Fig. 3, item 21, "Processor").

16. With respect to **Claim 7**:

Mault discloses a system according to claim 6, wherein said analyzer has the function of displaying the information having been automatically taken in, the function of asking an operator of said analyzer for whether the operation sequence of said analyzer is to be changed or not, the function of registering a result of confirmation made by the operator, and the function of changing the operation sequence of said analyzer in accordance with the registration result (Mault Fig. 3, item 28, "Display").

17. With respect to **Claim 8**:

Mault discloses a system according to claim 6, wherein said analyzer has the function of validating its own ability of the function of suppressing cross-contamination,



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and the function of determining whether the operation sequence of said analyzer is to be changed or not, based on combination of the validated ability of suppressing cross-contamination and the cross-contamination information having been automatically taken in (Mault [0009], "The outputs produced by the central computer, based on the statistical analysis of the inputted information, could include directing the individual to a healthcare agency, such as a hospital or a physician; directing the delivery of selected medications to selected areas; alerting healthcare officials to a particular health condition in a particular geographical location; and/or the issuance of statistical reports based on the statistical analysis.").

18. With respect to **Claim 9**:

Mault discloses a system according to claim 1, further including a processing system for enabling said maintenance center and said first examination centers to receive predetermined charges in exchange for offering the information (Mault Fig. 3, item 21, "Processor").

***Response to Arguments***

19. Applicant's arguments filed 11/19/2007 have been fully considered but they are not persuasive.

20. With respect to applicant's argument regard non-statutory subject under §101, Examiner respectfully disagrees. Referring to applicant's specification to interpret the newly amended claim language, Examiner has determined that the new nomenclature still refers to human beings. For example, applicants specification recites "Also, the

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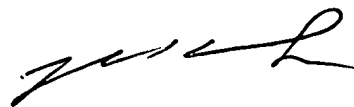
"supervisor", the "information offerer", and the "information receiver" are not limited to natural persons, and include persons, groups, companies, etc. The term "plurality of information receivers" primarily means that there are a plurality of different persons, groups, companies, etc. receiving the information, but does not exclude the case in which there are a plurality of information receivers in the same group or company, etc (Applicant specification, page 5). Therefore, Examiner is maintaining the §101 rejection.

21. With respect to applicant's argument regarding claim 2, Examiner respectfully disagrees. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. >*In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also *In re Swinehart*, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); < *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device *is*, not what a device *does*." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original). Here, Mault's system would be capable of carry out a validation test based on the collected information (Mault [0040-0042]). Therefore, Examiner maintains the §102 rejection.

***Conclusion***

22. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.



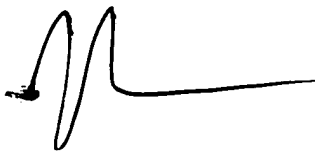
JOHN G. WEISS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew S. Meyers whose telephone number is (571)272-7943. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571)272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

12/12/07  
MSM

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